

ASSEMBLY BILL

No. 2781

Introduced by Committee on Insurance (Solorio (Chair), Bradford, Carter, Feuer, Hayashi, Nava, and Torres)

March 3, 2010

An act to amend Sections 1063.1 and 1063.75 of the Insurance Code, relating to insurance.

LEGISLATIVE COUNSEL'S DIGEST

AB 2781, as introduced, Committee on Insurance. Insurance: Guarantee Association.

Existing law establishes the California Insurance Guarantee Association to provide coverage against losses arising from the failure of an insolvent property, casualty, or workers' compensation insurer to discharge its obligations under its insurance policies. The association is managed by a board of governors appointed by the commissioner, the President pro Tempore of the Senate, and the Speaker of the Assembly.

Existing law defines the term "insolvent insurer" to mean an insurer that was a member insurer of the association, as specified, either at the time the policy was issued or when the insured event occurred, and against which an order of liquidation or receivership with a finding of insolvency has been entered by a court of competent jurisdiction, or, in the case of the State Compensation Insurance Fund, if a finding of insolvency is made by a duly enacted legislative measure.

This bill would delete an order of receivership as a qualification for being an insolvent insurer.

Existing law provides that any bonds to provide funds for covered claim obligations for workers' compensation claims shall be issued, as specified, prior to January 1, 2011.

This bill would extend the date for bonds to be issued to provide funds for covered claim obligations for workers' compensation claims, as specified, to January 1, 2013.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 1063.1 of the Insurance Code is amended
2 to read:

3 1063.1. As used in this article:

4 (a) "Member insurer" means an insurer required to be a member
5 of the association in accordance with subdivision (a) of Section
6 1063, except and to the extent that the insurer is participating in
7 an insolvency program adopted by the United States government.

8 (b) "Insolvent insurer" means an insurer that was a member
9 insurer of the association, consistent with paragraph (11) of
10 subdivision (c), either at the time the policy was issued or when
11 the insured event occurred, and against which an order of
12 liquidation ~~or receivership~~ with a finding of insolvency has been
13 entered by a court of competent jurisdiction, or, in the case of the
14 State Compensation Insurance Fund, if a finding of insolvency is
15 made by a duly enacted legislative measure.

16 (c) (1) "Covered claims" means the obligations of an insolvent
17 insurer, including the obligation for unearned premiums, that satisfy
18 all of the following requirements:

19 (A) Imposed by law and within the coverage of an insurance
20 policy of the insolvent insurer.

21 (B) Which were unpaid by the insolvent insurer.

22 (C) Which are presented as a claim to the liquidator in this state
23 or to the association on or before the last date fixed for the filing
24 of claims in the domiciliary liquidating proceedings.

25 (D) Which were incurred prior to the date coverage under the
26 policy terminated and prior to, on, or within 30 days after the date
27 the liquidator was appointed.

28 (E) For which the assets of the insolvent insurer are insufficient
29 to discharge in full.

1 (F) In the case of a policy of workers' compensation insurance,
2 to provide workers' compensation benefits under the workers'
3 compensation law of this state.

4 (G) In the case of other classes of insurance if the claimant or
5 insured is a resident of this state at the time of the insured
6 occurrence, or the property from which the claim arises is
7 permanently located in this state.

8 (2) "Covered claims" also includes the obligations assumed by
9 an assuming insurer from a ceding insurer where the assuming
10 insurer subsequently becomes an insolvent insurer if, at the time
11 of the insolvency of the assuming insurer, the ceding insurer is no
12 longer admitted to transact business in this state. Both the assuming
13 insurer and the ceding insurer shall have been member insurers at
14 the time the assumption was made. "Covered claims" under this
15 paragraph shall be required to satisfy the requirements of
16 subparagraphs (A) to (G), inclusive, of paragraph (1), except for
17 the requirement that the claims be against policies of the insolvent
18 insurer. The association shall have a right to recover any deposit,
19 bond, or other assets that may have been required to be posted by
20 the ceding company to the extent of covered claim payments and
21 shall be subrogated to any rights the policyholders may have
22 against the ceding insurer.

23 (3) "Covered claims" does not include obligations arising from
24 the following:

25 (A) Life, annuity, health, or disability insurance.

26 (B) Mortgage guaranty, financial guaranty, or other forms of
27 insurance offering protection against investment risks.

28 (C) Fidelity or surety insurance including fidelity or surety
29 bonds, or any other bonding obligations.

30 (D) Credit insurance.

31 (E) Title insurance.

32 (F) Ocean marine insurance or ocean marine coverage under
33 ~~any~~ *an* insurance policy including claims arising from the
34 following: the Jones Act (46 U.S.C. ~~Sec. 688~~ *Secs. 30104 and*
35 *30105*), the Longshore and Harbor Workers' Compensation Act
36 (33 U.S.C. Sec. 901 et seq.), or any other similar federal statutory
37 enactment, or ~~any~~ *an* endorsement or policy affording protection
38 and indemnity coverage.

39 (G) Any claims servicing agreement or insurance policy
40 providing retroactive insurance of a known loss or losses, except

1 a special excess workers' compensation policy issued pursuant to
2 subdivision (c) of Section 3702.8 of the Labor Code that covers
3 all or any part of workers' compensation liabilities of an employer
4 that is issued, or was previously issued, a certificate of consent to
5 self-insure pursuant to subdivision (b) of Section 3700 of the Labor
6 Code.

7 (4) "Covered claims" does not include any obligations of the
8 insolvent insurer arising out of any reinsurance contracts, nor any
9 obligations incurred after the expiration date of the insurance policy
10 or after the insurance policy has been replaced by the insured or
11 canceled at the insured's request, or after the insurance policy has
12 been canceled by the liquidator, nor any obligations to ~~any~~ a state
13 or to the federal government.

14 (5) "Covered claims" does not include any obligations to
15 insurers, insurance pools, or underwriting associations, nor their
16 claims for contribution, indemnity, or subrogation, equitable or
17 otherwise, except as otherwise provided in this chapter.

18 An insurer, insurance pool, or underwriting association may not
19 maintain, in its own name or in the name of its insured, ~~any~~ a claim
20 or legal action against the insured of the insolvent insurer for
21 contribution, indemnity or by way of subrogation, except insofar
22 as, and to the extent only, that the claim exceeds the policy limits
23 of the insolvent insurer's policy. In those claims or legal actions,
24 the insured of the insolvent insurer is entitled to a credit or setoff
25 in the amount of the policy limits of the insolvent insurer's policy,
26 or in the amount of the limits remaining, where those limits have
27 been diminished by the payment of other claims.

28 (6) "Covered claims," except in cases involving a claim for
29 workers' compensation benefits or for unearned premiums, does
30 not include ~~any~~ a claim in an amount of one hundred dollars (\$100)
31 or less, nor that portion of ~~any~~ a claim that is in excess of any
32 applicable limits provided in the insurance policy issued by the
33 insolvent insurer.

34 (7) "Covered claims" does not include that portion of ~~any~~ a
35 claim, other than a claim for workers' compensation benefits, that
36 is in excess of five hundred thousand dollars (\$500,000).

37 (8) "Covered claims" does not include any amount awarded as
38 punitive or exemplary damages, nor any amount awarded by the
39 Workers' Compensation Appeals Board pursuant to Section 5814

1 or 5814.5 of the Labor Code because payment of compensation
2 was unreasonably delayed or refused by the insolvent insurer.

3 (9) “Covered claims” does not include (A)~~any~~ a claim to the
4 extent it is covered by any other insurance of a class covered by
5 this article available to the claimant or insured or (B)~~any~~ a claim
6 by~~any~~ a person other than the original claimant under the insurance
7 policy in his or her own name, his or her assignee as the person
8 entitled thereto under a premium finance agreement as defined in
9 Section 673 and entered into prior to insolvency, his or her
10 executor, administrator, guardian, or other personal representative
11 or trustee in bankruptcy, and does not include~~any~~ a claim asserted
12 by an assignee or one claiming by right of subrogation, except as
13 otherwise provided in this chapter.

14 (10) “Covered claims” does not include any obligations arising
15 out of the issuance of an insurance policy written by the separate
16 division of the State Compensation Insurance Fund pursuant to
17 Sections 11802 and 11803.

18 (11) “Covered claims” does not include any obligations of the
19 insolvent insurer arising from~~any~~ a policy or contract of insurance
20 issued or renewed prior to the insolvent insurer’s admission to
21 transact insurance in the State of California.

22 (12) “Covered claims” does not include surplus deposits of
23 subscribers as defined in Section 1374.1.

24 (13) “Covered claims” shall also include obligations arising
25 under an insurance policy written to indemnify a permissibly
26 self-insured employer pursuant to subdivision (b) or (c) of Section
27 3700 of the Labor Code for its liability to pay workers’
28 compensation benefits in excess of a specific or aggregate retention,
29 provided, however, that for purposes of this article, those claims
30 shall not be considered workers’ compensation claims and therefore
31 are subject to the per claim limit in paragraph (7) and any payments
32 and expenses related thereto shall be allocated to category (c) for
33 claims other than workers’ compensation, homeowners, and
34 automobile, as provided in Section 1063.5.

35 These provisions shall apply to obligations arising under~~any~~ a
36 policy as described herein issued to a permissibly self-insured
37 employer or group of self-insured employers pursuant to Section
38 3700 of the Labor Code and notwithstanding any other provision
39 of the Insurance Code, those obligations shall be governed by this
40 provision in the event that the Self-Insurers’ Security Fund is

1 ordered to assume the liabilities of a permissibly self-insured
2 employer or group of self-insured employers pursuant to Section
3 3701.5 of the Labor Code. The provisions of this paragraph apply
4 only to insurance policies written to indemnify a permissibly
5 self-insured employer or group of self-insured employers under
6 subdivision (b) or (c) of Section 3700, for its liability to pay
7 workers' compensation benefits in excess of a specific or aggregate
8 retention, and this paragraph does not apply to special excess
9 workers' compensation insurance policies unless issued pursuant
10 to authority granted in subdivision (c) of Section 3702.8 of the
11 Labor Code, and as provided for in subparagraph (G) of paragraph
12 (3) of subdivision (c). In addition, this paragraph does not apply
13 to any claims servicing agreement or insurance policy providing
14 retroactive insurance of a known loss or losses as are excluded in
15 subparagraph (G) of paragraph (3) of subdivision (c).

16 Each permissibly self-insured employer or group of self-insured
17 employers, or the Self-Insurers' Security Fund, shall, to the extent
18 required by the Labor Code, be responsible for paying, adjusting,
19 and defending each claim arising under policies of insurance
20 covered under this section, unless the benefits paid on a claim
21 exceed the specific or aggregate retention, in which case:

22 (A) If the benefits paid on the claim exceed the specific or
23 aggregate retention, and the policy requires the insurer to defend
24 and adjust the claim, the California Insurance Guarantee
25 Association (CIGA) shall be solely responsible for adjusting and
26 defending the claim, and shall make all payments due under the
27 claim, subject to the limitations and exclusions of this article with
28 regards to covered claims. As to each claim subject to this
29 paragraph, notwithstanding any other provisions of the Insurance
30 Code or the Labor Code, and regardless of whether the amount
31 paid by CIGA is adequate to discharge a claim obligation, neither
32 the self-insured employer, group of self-insured employers, nor
33 the Self-Insurers' Security Fund, shall have any obligation to pay
34 benefits over and above the specific or aggregate retention, except
35 as provided in subdivision (c).

36 (B) If the benefits paid on the claim exceed the specific or
37 aggregate retention, and the policy does not require the insurer to
38 defend and adjust the claim, the permissibly self-insured employer
39 or group of self-insured employers, or the Self-Insurers' Security
40 Fund, shall not have any further payment obligations with respect

1 to the claim, but shall continue defending and adjusting the claim,
2 and shall have the right, but not the obligation, in any proceeding
3 to assert all applicable statutory limitations and exclusions as
4 contained in this article with regard to the covered claim. CIGA
5 shall have the right, but not the obligation, to intervene in any
6 proceeding where the self-insured employer, group of self-insured
7 employers, or the Self-Insurers' Security Fund is defending ~~any~~
8 ~~such a~~ claim and shall be permitted to raise the appropriate
9 statutory limitations and exclusions as contained in this article
10 with respect to covered claims. Regardless of whether the
11 self-insured employer or group of self-insured employers, or the
12 Self-Insurers' Security Fund, asserts the applicable statutory
13 limitations and exclusions, or whether CIGA intervenes in ~~any~~
14 ~~such a~~ proceeding, CIGA shall be solely responsible for paying
15 all benefits due on the claim, subject to the exclusions and
16 limitations of this article with respect to covered claims. As to
17 each claim subject to this paragraph, notwithstanding any other
18 provision of the Insurance Code or the Labor Code and regardless
19 of whether the amount paid by CIGA is adequate to discharge a
20 claim obligation, neither the self-insured employer, group of
21 self-insured employers, nor the Self-Insurers' Security Fund, shall
22 have ~~any~~ an obligation to pay benefits over and above the specific
23 or aggregate retention, except as provided in this subdivision.

24 (C) In the event that the benefits paid on the covered claim
25 exceed the per claim limit in paragraph (7) of subdivision (c), the
26 responsibility for paying, adjusting, and defending the claim shall
27 be returned to the permissibly self-insured employer or group of
28 employers, or the Self-Insurers' Security Fund.

29 These provisions shall apply to all pending and future
30 insolvencies. For purposes of this paragraph, a pending insolvency
31 is one involving a company that is currently receiving benefits
32 from the guaranty association.

33 (d) "Admitted to transact insurance in this state" means an
34 insurer possessing a valid certificate of authority issued by the
35 department.

36 (e) "Affiliate" means a person who directly or indirectly, through
37 one or more intermediaries, controls, is controlled by, or is under
38 common control with an insolvent insurer on December 31 of the
39 year next preceding the date the insurer becomes an insolvent
40 insurer.

1 (f) “Control” means the possession, direct or indirect, of the
2 power to direct or cause the direction of the management and
3 policies of a person, whether through the ownership of voting
4 securities, by contract other than a commercial contract for goods
5 or nonmanagement services, or otherwise, unless the power is the
6 result of an official position with or corporate office held by the
7 person. Control is presumed to exist if ~~any~~ a person, directly or
8 indirectly, owns, controls, holds with the power to vote, or holds
9 proxies representing, 10 percent or more of the voting securities
10 of any other person. This presumption may be rebutted by showing
11 that control does not in fact exist.

12 (g) “Claimant” means ~~any~~ an insured making a first party claim
13 or ~~any~~ a person instituting a liability claim; provided that no person
14 who is an affiliate of the insolvent insurer may be a claimant.

15 (h) “Ocean marine insurance” includes marine insurance as
16 defined in Section 103, except for inland marine insurance, as well
17 as any other form of insurance, regardless of the name, label, or
18 marketing designation of the insurance policy, that insures against
19 maritime perils or risks and other related perils or risks, ~~which that~~
20 are usually insured against by traditional marine insurance such
21 as hull and machinery, marine builders’ risks, and marine
22 protection and indemnity. Those perils and risks insured against
23 include, without limitation, loss, damage, or expense or legal
24 liability of the insured arising out of or incident to ownership,
25 operation, chartering, maintenance, use, repair, or construction of
26 ~~any~~ a vessel, craft or instrumentality in use in ocean or inland
27 waterways, including liability of the insured for personal injury,
28 illness, or death for loss or damage to the property of the insured
29 or another person.

30 (i) “Unearned premium” means that portion of a premium as
31 calculated by the liquidator that had not been earned because of
32 the cancellation of the insolvent insurer’s policy and is that
33 premium remaining for the unexpired term of the insolvent
34 insurer’s policy. “Unearned premium” does not include any amount
35 sought as return of a premium under ~~any~~ a policy providing
36 retroactive insurance of a known loss or return of a premium under
37 ~~any~~ a retrospectively rated policy or a policy subject to a contingent
38 surcharge or ~~any~~ a policy in which the final determination of the
39 premium cost is computed after expiration of the policy and is

1 calculated on the basis of actual loss experience during the policy
2 period.

3 SEC. 2. Section 1063.75 of the Insurance Code is amended to
4 read:

5 1063.75. Any bonds issued to provide funds for covered claim
6 obligations for workers' compensation claims shall be issued prior
7 to January 1, ~~2011~~ 2013, in an aggregate principal amount
8 outstanding at any one time not to exceed \$1.5 billion, and any
9 bonds issued or issued to refund bonds shall not have a final
10 maturity exceeding 20 years from the date of issuance. The bonds
11 shall be issued at the request of CIGA, shall be in the form, shall
12 bear the date or dates, and shall mature at the time or times as the
13 indenture authorized by the request may provide. The bonds may
14 be issued in one or more series, as serial bonds or as term bonds,
15 or as a combination thereof, and, notwithstanding any other
16 provision of law, the amount of principal of, or interest on, bonds
17 maturing at each date of maturity need not be equal. The bonds
18 shall bear interest at the rate or rates, variable or fixed or a
19 combination thereof, be in the denominations, be in the form, either
20 coupon or registered, carry the registration privileges, be executed
21 in the manner, be payable in the medium of payment at the place
22 or places within or without the state, be subject to the terms of
23 redemption, contain the terms and conditions, and be secured by
24 the covenants as the indenture may provide. The indenture may
25 provide for the proceeds of the bonds and funds securing the bonds
26 to be invested in any securities and investments, including
27 investment agreements, as specified therein. CIGA may enter into
28 or authorize any ancillary obligations or derivative agreements as
29 it determines necessary or desirable to manage interest rate risk
30 or security features related to the bonds. The bonds shall be sold
31 at public or private sale by the Treasurer at, above, or below the
32 principal amount thereof, on the terms and conditions and for the
33 consideration in the medium of payment that the Treasurer shall
34 determine prior to the sale.

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